



Generally Speaking

Comings and Goings

Welcome to: **Lydia Ver**, LOA I in the Juneau Executive Offices of the Attorney General; In Anchorage, **Dennis Morgan**, an Administrative Clerk II in the Human Services Section, and **Renee Cote**, LOA I in Collections and Support.

Although the Labor and State Affairs Section in Juneau was sad to say good-bye to LOA II **Becky Allison**, who moved to the Torts and Workers' Compensation Section, they are delighted to congratulate **Janet Mehl** who will fill Becky's position.

LOA **Vickie Gould** left the Fairbanks Transportation Section to assist the Fairbanks' Opinions and Appeals Section. Receptionist **Audra Hotchkiss** will take over from Vickie as the Transportation Section LOA. Vickie will be sorely missed, but the section looks forward to working with Audra.

AAG Kate Sheehan in the Juneau Torts and Workers' Compensation Section regrettably is leaving at the end of this month to serve as the Deputy Director for the Division of Personnel and Labor Relations, Department of Administration. The section wishes her well.

CIVIL DIVISION

Commercial and Fair Business

Board of Registration for Architects, Engineers, and Land Surveyors

On April 19 Juneau Superior Court Judge Patricia Collins affirmed a decision of the Architects, Engineers, and Land Surveyors Board that denied the request of an engineer to waive examination. The engineer had a master's degree in engineering and passed the professional engineering examination. He applied to the board for a waiver of the Fundamentals of Engineering examination based on his 20 years of professional work. The board denied his request. After a hearing, former OAH ALJ Stebing recommended denial, because the engineer had not provided third party verification of the 20 years of professional work as required by board regulations relating to waiver of the examination. The ALJ rejected the engineer's argument that a separate regulation was needed to require third party verification. He appealed to the superior court. In her decision, Judge Collins agreed that requiring third party verification is a common-sense reading of the regulation providing for waiver and a separate regulation was

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unnecessary. AAG David Brower handled the administrative hearing and the appeal to the superior court.

Board of Marine Pilots

The Board of Marine Pilots denied Richard Seigel's license renewal application based on prior reports of piloting difficulties and a recent simulator evaluation that the board considered unsatisfactory. Seigel requested an administrative hearing, but also sued the state for injunctive relief asking the court to order the board to renew his license. A preliminary injunction hearing was held on April 25. AAG David Brower represented the Board of Marine Pilots at the hearing and was successful in getting Judge Michael Span to deny injunctive relief. The administrative hearing has not been scheduled yet.

Big Game Board

On April 18, following a hearing on April 2, Administrative Law Judge ("ALJ") Kay Howard issued a proposed decision recommending that the Big Game Commercial Services Board vacate its March 20, 2007 order summarily suspending for 30 days (the maximum amount of time allowed under AS 08.54.710(i)) the license of Dillingham guide-outfitter Byron Lamb. The board's March 20 order was based on Lamb's recent conviction of eight counts of felony assault. On April 19 pursuant to AS 44.64.060(e), the Division of Corporations, Business and Professional Licensing, which also filed an accusation against Lamb based on the same conduct, filed a proposal for action, recommending that the board not vacate its summary suspension order, which expired pursuant to its own terms on April 20, 2007. The board, whose next regular meeting is not until December, is attempting to schedule a telephonic meeting to consider the proposed decision. In the meantime, on April 24, 2007, in Dillingham Superior Court, Lamb was sentenced to seven years jail time (with four

years suspended) and five years probation, and fined \$40,000, for those same convictions. The charges arose from a series of incidents in September 2005 wherein Lamb used his airplane as a weapon to dive at and chase several individuals on the ground and in another plane in the vicinity of his hunting camp near Dillingham. The ALJ described Lamb's actions as "solitary and impulsive", and not indicative of a pattern of behavior. Since Lamb also enjoyed a complaint free guiding season in 2006 (while awaiting trial on the criminal charges) and was under a court order not to fly an airplane (as a condition of his release pending sentencing), the ALJ found that Lamb was not currently a clear and immediate danger to the public health and safety as provided in AS 08.54.710(i). AAG Robert Auth represented the Division at hearing on the summary suspension.

Regulatory Commission of Alaska

On April 4, Senior AAG Rob Royce argued before Superior Court Judge Sen K. Tan an expedited administrative appeal brought by the Alaska Exchange Carriers Association, Inc. ("AECA"). AECA is an organization of 21 local telephone exchange carriers and administers a system of access charges that local exchange carriers charge long-distance carriers for use of their networks. AECA sought to intervene in a proceeding before the Regulatory Commission of Alaska ("RCA") dealing with a "first point of switching" network dispute between Interior Telephone Company and the long distance telephone providers of AT&T Alascom and GCI. AECA was denied intervention in the administrative proceeding on the basis that it did not have a sufficient interest in a "first point of switching" dispute that mainly involves engineering issues as opposed to access charge issues.

On April 10 the superior court affirmed the RCA's decision to deny intervention to AECA. The court found that AECA had no statutory right of intervention and that the RCA has substantial discretion in granting or denying intervention in its proceedings. The court concluded that the RCA

did not abuse its discretion in denying AECA intervention.

Human Services

Litigation Update

After resolving a number of Medicaid cases the past month, the Northern Justice Project has filed motions for attorneys' fees in three of those cases: *Solski*, *Bayless*, and *Krone*. The section has filed substantive oppositions to each of these motions, aided significantly by the Alaska Supreme Court's recent decision in *State of Alaska v. Native Village of Nunapitchuk*, No. 6118 (April 20, 2007). This decision was particularly relevant and helpful in the two cases where the NJP sought treble and double their actual fees.

In *Wings of Hope v. SOA, DHSS*, an administrative appeal before the superior court, Section Chief Stacie Kraly prevailed in her defense of the agency's decision to revoke assisted living home licenses.

AAG Libby Bakalar prevailed in *Allen v. State*, a 601 Appeal brought by ALSC. This case centered on a dispute over how the state seeks recoupment of overpayments under the food stamp program. AAG Bakalar prevailed on all points, winning support for the administrative process. AAG Bakalar filed a motion for attorneys' fees due to the fact the appeal had no merit based upon existing state and federal case law.

The section received a recommended decision from the ALJ in the Fairbanks Ambulatory Surgical Center appeal. The core of the decision would affirm the underlying agency decision, however, there are complicating factors to address. The parties have until May 7, 2007 to file responses to this proposed decision.

Finally, the Petition for Review in the *Baker* case was granted by the Supreme Court related

to certain notices DHSS uses in administering the personal care attendant program. Opinions, Appeals and Ethics Section Chief Joanne Grace will handle the matter.

Medicaid

Subrogation/Liens

During the month of April, the subrogation team recovered \$142,230.71 in Medicaid funds as a result of 21 case resolutions. At the present time there are 678 open matters involving Medicaid liens. The total amount collected during calendar year 2007 to date is \$454,430.59. Since the AG's office has been pursuing Medicaid lien/subrogation activities, starting in 2005, a total of \$3,298,868.18 has been collected and 713 matters have been resolved.

Medicaid Audits

AAG Rebecca Polizzotto continues to work on the Medicaid Audit appeals and has been successful in resolving a number of them. The underlying issues in each relate to what constitutes a finding and whether every finding constitutes an overpayment. She has settled four appeals for a total recovery of almost \$92,000. Despite settling these four, four new appeals were filed. Briefing is due in one of her cases this month, Respiratory Medical, where one of the major issues in the appeal is an issue of first impression: the use of statistical extrapolation.

Agency Advice

There continues to be a lot of day-to-day advice for the Medicaid agencies to assist them in managing and administering all of the Medicaid programs. AAGs Robin Fowler and Nevhiz Calik are handling most of this work.

Licensing

AAG Rebecca Polizzotto provided training this past month for day care licensing workers in Fairbanks, Anchorage and Juneau. She continues to participate in monthly meetings with the Office of Children's Services licensing supervisors. AAG Polizzotto resolved two licensing hearings by settlement/mediation this past month, but has four more in various stages of appeal.

Labor and State Affairs

Alaska Energy Authority/AIDEA

Powercorp Alaska, LLC v. State, Alaska Industrial Development and Export Authority. On April 18 the Alaska Supreme Court heard oral argument in this case concerning a challenge to the decision of AEA to invite bids from manufacturers for eight switchgears for rural power systems. Powercorp protested the decision to use "programmable logic controllers" in the power systems, rather than the PC-based controller that Powercorp uses in the power systems it installs. An administrative hearing officer and the superior court on appeal rejected Powercorp's bid protest, and Powercorp has appealed to the Alaska Supreme Court. AAG Mike Mitchell made the argument to the Court. AAG Rachel Witty assisted on the brief.

Education

Zuni Public School Dist. No. 89 v. Department of Education. On April 17 the U. S. Supreme Court issued the decision in this case. The Court upheld the method used by the Secretary of Education to determine whether a state's funding system is "equalized" for purposes of the Impact Aid Act. The department pays impact aid to local school districts when a substantial federal presence (such as a military base) within a local school district limits the district's property tax base. The Act generally prohibits a state from considering federal impact

aid when allocating state funds among school districts. If, however, the Secretary of Education certifies that the state's funding system is equalized because the state funds education in a manner that accounts for disparities in the property tax base, the state may consider federal impact aid funds received by a school district when allocating state funds.

Alaska is one of three states covered by this exception, which was challenged by a New Mexico school district. The Court concluded that the Secretary's method of determining equalization fell within the plain meaning of the statute, and was more consistent with the statute's history and purpose than the methodology advocated by the school district. The decision permits the state to continue its longstanding practice of taking federal funds into account when allocating funds for education. The state participated as an amicus in a brief authored by AAG Kathleen Strasbaugh.

Procurement

SOA v. Bachner. Oral argument was held in this case before the Alaska Supreme Court on April 18. This case is before the court on a petition for review which the state filed to challenge the superior court's decision to reverse an administrative decision regarding the appropriate remedy for disappointed bidders protesting a contract award in which there had been improprieties in the bid process. The agency had affirmed the protest but concluded that the award of bid preparation costs was the proper remedy, rather than cancellation and rescoring or re-bidding the contract, because the contract had already been let and construction begun by an innocent winning bidder. The state seeks to reaffirm the agency's decision. AAG Margie Vandor argued on behalf of the state.

Retirement and Benefits

The Office of Administrative Hearings issued a proposed decision on March 23 affirming the Administrator's decision that a former employee was not entitled to occupational disability benefits. The OAH concluded that the denial of benefits

was proper because the employee was terminated from employment for cause, not as a result of a disability. AAG Toby Steinberger defended the Administrator's decision.

On April 9 the OAH issued a proposed decision, affirming the administrator's denial of a claim for occupational disability benefits for a disabling condition that was alleged to be exacerbated by sitting while at work for the state. The hearing officer concluded that employment was not a substantial factor in the disability. AAGs Gina Ragle and Joan Wilkerson handled this matter for the administrator.

Workers' Compensation

Kennecott Greens Creek Mining Co. v. Second Injury Fund. The Workers' Compensation Board issued a decision on April 5 in this case in which AAG Larry McKinstry represented the Second Injury Fund. The board found that an increase in symptoms suffered by the employee was a compensable "second" injury despite the absence of any evidence showing a particular incident or injury causing the increase in symptoms, and concluded that benefits paid for the injury qualified for fund reimbursement. However, the board agreed with the fund that benefits for retraining under AS 23.30.041(k) were not "compensation" subject to reimbursement. Because neither party prevailed, the board denied both parties attorney's fees.

Special thanks to paralegal Jean Clarkin for additional duties assigned and unassigned and to AAG Kathleen Strasbaugh for picking up a retirement and benefits case.

Legislation and Regulations

During April 2007, the Legislation and Regulations Section spent an active month reviewing legislation and amendments for the 2007 regular session of the Alaska State Legislature. The section also edited several administrative orders for consideration by the governor. Additionally, the

section edited several bill reviews for legal issues on bills pending before the governor for action. Regulations projects reviewed in the section during April 2007 include:

Department of Health and Social Services (facilities licensure and hospice services); State Commission for Human Rights (finality and commission review of staff decisions); Department of Commerce, Community, and Economic Development, Division of Insurance (consumer credit insurance); Alaska Labor Relations Agency (petition, hearing, and appeal procedures); State Board of Education and Early Development (public school performance program: general eligibility); and Department of Commerce, Community, and Economic Development, occupational licensing boards (Board of Certified Real Estate Appraisers: work experience requirements, educational requirements, examinations, and standards for acceptable education; Board of Marine Pilots: endorsements, license requirements, regional and general license requirements; State Board of Registration for Architects, Engineers, and Land Surveyors: simplified application for reexamination; Board of Veterinary Examiners: licensure and good standards).

Finally, the section performed technical edits on the Personnel Board regulations, which are not subject to the Administrative Procedure Act. The regulations concern the appointment, promotion, and leaves of absences for certain state employees.

Natural Resources

Federal Subsistence Issues Continue to Boil

April was a busy month for federal subsistence issues. AAGs Steven Daugherty and Mike Sewright assisted the Department of Fish & Game with numerous issues and the department's official comments relating to current federal regulatory proposals and outstanding requests for reconsideration. They also filed a reply to the federal opposition to the state's request for summary judgment in a federal subsistence case.

State v. Fleagle. This is a case in the U.S. District Court, challenging a customary and traditional (C&T) use determination for Chistochina, by the Federal Subsistence Board for all 10,000 square miles of State Game Management Unit 12, based on a record demonstrating actual and historical use in less than 25 percent of the unit. The federal government argued in its opposition that the State of Alaska lacks standing to challenge its C&T determinations and suffers no harm from such determinations despite impacts to the state's sovereign interests in fish and wildlife management and enforcement of its civil and criminal codes.

The United States also advanced the new and novel argument that customary and traditional harvest by a community of a particular wildlife population in an established area is not required for a positive C&T determination, essentially arguing that if Chistochina residents have used moose the board can grant them a preference for taking moose anywhere in the state. Briefing is now complete in that case, and oral argument has not been requested.

On another front, the Federal Subsistence Board did accept, in significant part, the state's request for reconsideration of the Board's positive C&T determination for Ninilchik and Happy Valley for all fish on the Kenai River.

Endangered Species Act Issues Heat Up

April was also a busy month for Endangered Species Act issues. AAG Steven Daugherty assisted the Department of Fish & Game with issues related to development of state comments to the U.S. Fish and Wildlife Service on the proposed listing of polar bear under the Endangered Species Act and has started to gear up to provide assistance with similar beluga whale issues. Polar bear comments were filed on April 9. On April 19 the National Marine Fisheries Service proposed listing the beluga whales found in Cook Inlet as endangered.

Tongass Settlement

Defendant United States Forest Service, Intervenor Alaska Forest Association, the State of Alaska, and a number of environmental organization group plaintiffs reached a universal settlement agreement that resolves four cases pending in federal courts. These cases challenged various timber sales in the Tongass National Forest, all of which were based on the existing Tongass Land Management Plan (TLMP). The current TLMP was invalidated by the Ninth Circuit Court of Appeals in 2005. A draft revised TLMP has been published with an expected effective date for a final plan in the fall of 2007.

The settlement agreement allows identified timber sales to proceed without further legal challenge. These sales are expected to provide enough timber for existing Southeast Alaska timber mills to continue operations until such time as new sales under the final revised TLMP are possible.

In exchange for allowing certain sales to go forward, other sale areas were withdrawn and may not be offered until the revised TLMP is in effect. The Forest Service also agreed not to issue new records of decision in roadless areas of the Tongass prior to the effect date of final revised TLMP. In addition, the parties agreed to a trial of a new collaborative process regarding several specific sales in an attempt to avoid future litigation. The settlement is pending approval by the United States District Court.

Hobbs v. State, TLO and DNR. This action was brought by a prospective bidder, Hobbs, at a coal lease sale held by the Trust Land Office (TLO), for mental health trust lands near Chickaloon. Hobbs claims that the public notice of the lease sale did not satisfy the statutory or regulatory requirements and, therefore, the lease sale is invalid. Hobbs asserts that the statutory provisions of AS 38.05.945 apply to the lease sale. The TLO contends that 11 AAC 99.050 provides the requirements of public notice for a trust land disposal, and that the regulation

specifically exempts trust land disposals from operation of AS 38.05.945. Cross motions for summary judgment have been filed, and briefing will be complete by the end of the month. AAG Colleen Moore represents the TLO and AAG Ruth Hamilton Hesse represents DNR.

King v. State. Plaintiffs filed this accretion case in 2003 claiming almost 11 acres of land had accreted to their parcel in Juneau. In late 2003, plaintiffs moved for entry of default against all the parties who had failed to answer and against all unknown parties with an interest. They filed a proposed decree quieting title with their application for default that was broad enough to cover the state as well as all other parties, but which purported to require approval from the Attorney General's office, which it did not have.

The court inadvertently signed the decree anyway, but did not send it to the state. In 2005, the state became aware of the signed decree. After discussions with plaintiffs' counsel, and representations from him that the decree was only intended to be against the defaulting parties and that the claims against the state were still in process of being resolved, no motion was filed. The case proceeded to work towards resolving the accretion claim, including the parties filing a stipulation about the procedure to resolve the claims between plaintiffs and the state. After that, the state discovered an error in the plat that was the beginning point for plaintiffs' claims. The state then took the position that the proposed boundary was misplaced, that the claim actually encompassed state land, and plaintiffs' claims should be reduced to about 2.2 acres. Plaintiffs complained that the state's change in position was inconsistent with the parties' stipulation and not in good faith, and another seven months passed. When the state reminded plaintiffs that they were going to modify the plat, plaintiffs then replied that the 2003 decree was binding on the state and that the state was proceeding in violation of the court's order. After being unable to resolve the dispute informally, AAG Colleen

Moore filed a motion to set aside the 2003 decree, which the court granted. The section is now back to square one in resolving the accretion dispute.

Copper Timber Sale Appeal

On April 11 the Alaska Center for the Environment, Alaska Survival, and Richard Leo filed an appeal in Palmer Superior Court of the Copper Timber Sale offered by the Division of Forestry. The appeal lists 19 points addressing the division's consideration of public comments, compliance with area management plans, and constitutional resource management issues. AAG Anne Nelson represents the Division of Forestry in this proceeding.

University Land Bill Litigation

Earthjustice, representing the Southeast Alaska Conservation Council and Tongass Conservation Society, filed suit in Juneau Superior Court against the state and the University of Alaska. The suit alleges that legislation granting certain state lands to the University and requiring that net income generated from the land be held in a separate endowment trust violates article IX, section 7 of the Alaska Constitution by creating a dedicated fund. AAG Anne Nelson represents DNR in this case.

Dodson v. CFEC. On October 24, 2006, the state received a favorable decision from the superior court affirming the CFEC's decision not to award Dodson a Chatham Strait sablefish permit. The Supreme Court allowed plaintiff to file a late appeal. The section has finalized a settlement of the appeal in which the CFEC agreed to issue an interim use permit to allow the plaintiff to fish through the 2008 fishing season, and the plaintiff agreed to dismiss the appeal with prejudice.

A term was added providing that the settlement would be treated as a decision on the merits of the appeal, and plaintiff would be in the same position legally as if he continued with the appeal

and lost on the merits. Plaintiff wanted this additional term in order to protect himself in case of any future changes in law that might give him some opportunity to resurrect the permit application. Essentially, the settlement was based upon how long CFEC believed the plaintiff would get to keep fishing while the appeal was decided. This settlement is more beneficial, however, because no costs and fees are expended on the appeal, and there is now a date certain when the CFEC knows it will no longer have to issue this interim permit. AAG Colleen Moore represented CFEC in this appeal.

Kuzmin v. CFEC. On April 3 AAG Vanessa Lamantia filed the state's brief in the Homer Superior Court in this appeal of a CFEC decision denying the appellant's application for a permit in the Kodiak bairdi Tanner crab pot fishery. The state argued that because Kuzmin had no recorded landings in 2001, failed to prove that he was a partner of the gear operator, and failed to prove that he was in joint control of the fishing operation in 2001, the CFEC properly denied him skipper participation points for 2001 and properly denied his permit application.

Opinions, Appeals and Ethics

AAG Judy Bockmon issued three written advisory opinions this month, and considered and granted a request for a conflict waiver. She also researched issues relating to representation by the Department of Law of multiple agencies in court proceedings, and directed an inquiry to NAAG to seek information on the way other states handle this conflict issue.

In April, AAG Dave Jones continued to monitor and participate in legislative hearings on ethics legislation.

Appeals/Litigation

Wetherhorn v. API. The Court issued a new opinion this month in place of its original

January opinion in *Wetherhorn v. API*. Counsel for Ms. Wetherhorn, Mr. Gottstein, had filed a petition for rehearing asking the Court to reverse or vacate the commitment order entered against her in light of the fact that Ms. Wetherhorn's original commitment was not considered under the commitment standard as clarified by the Court. API did not oppose the rehearing to the extent that it sought a vacation of the commitment order. Under the original decision, the Court had affirmed the commitment order without considering whether the facts met the standard as clarified. No one disputed that the issue was moot. The rehearing granted, providing for vacation of the commitment order, removes an ambiguity in the original decision.

State v. Doherty. AAG Megan Webb participated in oral argument before the Alaska Supreme Court in this case which involved two separate petitions for review arising out of a tort case against the Office of Children's Services and a social worker. The tort case stems from a CINA case, in which OCS was granted legal custody of a child and ultimately sought termination of her mother's parental rights. At the conclusion of the termination trial, the CINA court issued an order denying the petition to terminate parental rights. OCS subsequently returned the child to her mother's physical and legal custody, and the CINA case was dismissed.

After the CINA case was closed, the mother and child filed a lawsuit against the social worker. The gravamen of the case claims was the social worker had interfered in the parent-child relationship during the CINA case. Two of these claims alleged violations of 42 U.S.C. §1983. In response to the §1983 claims, the social worker filed a motion to dismiss, asserting that she was entitled, under federal law, to immunity. The trial court denied her motion, relying not on federal law but on state law. The social worker obtained interlocutory appeal of this decision, alleging that the trial court committed reversible error in relying on state law rather than federal law in considering her claim of immunity.

The second petition arises from a separate issue. The mother and child filed a motion in limine in which they asked the trial court to preclude the social worker from litigating the findings of fact entered by the CINA court in its order denying the petition to terminate parental rights. In granting this motion, the trial court precluded the social worker from litigating 47 factual findings issued by the CINA court. The social worker obtained interlocutory appeal of this order since she was neither a party to nor in privity with a party to the CINA case, facts she argued should have prevented application of collateral estoppel against her.

AKPIRG v. State. Oral argument was held before the Alaska Supreme Court on April 17th in AKPIRG's constitutional challenge to 2005 legislation that changed how Alaska workers' compensation cases are decided in the executive branch.

The 2005 legislation creates the Workers' Compensation Appeals Commission to review final decisions of the Alaska Workers' Compensation Board, provides for direct judicial review by the Alaska Supreme Court of final commission decisions, and removes judicial review of workers' compensation decisions by the superior court. The new appeals commission must follow Alaska Supreme Court decisions decided before its creation. The commission's decisions are binding on the compensation board and on the commission unless they are subsequently reversed by the Alaska Supreme Court. AKPIRG challenges the legislation as unconstitutional on its face claiming the appeals commission is a "court" improperly placed with the executive branch in violation of article IV of the Alaska Constitution. AKPIRG also alleges that the statute violates the separation of powers doctrine by withdrawing the jurisdiction of the superior court to review workers' compensation decisions and vesting review of board decisions in the appeals commission.

The state argues that the appeals commission is a properly created "quasi-judicial agency" under

Article III of the Alaska Constitution and issues the final agency decision (not a court decision) on compensation claims. The state argues that the statute does not violate the separation of powers because the constitution expressly authorizes the legislature to prescribe the jurisdiction of the courts and because the Supreme Court retains its constitutionally-granted final appellate authority.

Sr. AAG Paul Lyle presented the argument for the state. The Court was active in its questioning. One justice expressed concern that the legislation made appeals commission decisions binding on the courts. The state argued that, read in context, the statute means that appeals commission decisions would bind only the Workers' Compensation Board and the commission itself.

Dental Health Aide Lawsuit. This month the superior court granted the joint motion of the parties to move the trial of this case from October 2007 to June 2008. The parties sought to move the trial date to provide the court with sufficient time to decide the parties' summary judgment motions and to avoid the necessity of preparing for trial while those motions are pending.

The primary issue in the case is whether dental health aide therapists – who are trained and licensed to provide dental treatment to rural resident beneficiaries of the Indian Health Service's Community Health Aide Program – must also obtain state dentist licenses. The parties' summary judgment motions comprise nearly 1,000 pages of briefing and related exhibits. The motions address federal preemption, whether Alaska recognizes a private right of action to enforce state licensing laws, the separation of powers and equal protection.

Tuck P. v. OCS. The State Supreme Court decided *Tuck P. v. OCS*, (#S-12342), a termination of parental rights case, in an unpublished memorandum decision. The Supreme Court upheld the trial court's termination of a

father's parental rights based on his history of substance abuse. The father argued that the trial court erred because: (1) he was clean and sober at the time of the termination trial and deserved more time to demonstrate his ability to parent his son; and (2) OCS did not make reasonable efforts to reunify the family while the father was incarcerated.

The Supreme Court rejected both arguments, finding that (1) the father's period of sobriety was too short-lived to compel the trial court to find that he had overcome his addiction in a timely fashion, especially when he had not participated in treatment or completed any other portion of his case plan; and (2) while OCS's reunification efforts when the father was incarcerated were "not extensive," the department made adequate efforts, with which the father did not cooperate, over the life of the case. AAG Mike Hotchkin briefed the appeal.

Public Defender v. Eric Smith. In this case, the State Supreme Court upheld Judge Smith's appointment of the Public Defender Agency to act as advisory counsel to a pro se parent in a child-protection case. The Public Defender Agency petitioned the Supreme Court to review Judge Smith's appointment, arguing that acting as advisory counsel is not allowed by the agency's authorizing statute. The Supreme Court denied the agency's petition without comment. This is the second case where this issue has arisen, with the same result.

Regulatory Affairs & Public Advocacy (RAPA)

Office Relocation

Effective April 23 the section relocated its Brady Building offices from the second floor to the northeast corner of the first floor. This will consolidate the offices of the RAPA attorneys, Daniel Patrick O'Tierney, Steve DeVries and Sam Cason, and LOA Kristi Duff for the first time since the establishment of the section in 2005.

The section continues to maintain the other portion of its office in the ConocoPhillips building where the section's utility analysts are located.

New Case

DOE/FE 07-02-LNG, state motion to intervene.

In consultation with the Governor's office and DNR, RAPA prepared and filed on April 9 the State of Alaska's motion to intervene and request for additional procedures in the U.S. Department of Energy (DOE) proceeding to consider the application by ConocoPhillips and Marathon Oil Co. for extension of their present permit to export liquefied natural gas (LNG) from the Cook Inlet.

The state's motion and accompanying comments identified the state's compelling interests in: ensuring that adequate Cook Inlet natural gas supplies for Railbelt utilities are under contract, securing the commitment of continued applicant investment in developing replacement gas reserves, and promoting the competitiveness of the gas market via open access to the LNG plant gas purchases for third-party producers.

The applicants have requested until May 8 to file an omnibus answer to the numerous motions to intervene and comments and protests filed, including that of the state on April 9.

Appeal

U-05-43&44/4FA-07-1360CI, GHU/CUC cross-appeal.

On April 5 RAPA filed a notice of cross-appeal in Fairbanks superior court of an RCA rate case decision involving Golden Heart Utilities/College Utilities Corp. These investor-owned utilities provide water and sewer utility service in the Fairbanks area.

After a contested adjudicatory hearing, the RCA issued a decision adopting numerous RAPA advocacy positions which resulted in the ordering of ratepayer refunds. The utilities appealed; RAPA cross-appealed regarding issues of synchronization to year-end rate base and

elimination of rate base reduction for unallocated contributions in aid of construction (CIAC).

Torts & Workers' Compensation

AAG Joe Cooper argued a case before the Workers' Compensation Appeals Commission involving issues of statutory interpretation and estoppel. The claimant's lawyer challenged the application of former AS 23.30.395(17), which limits mental injury claims based on mental stress, in the context of a former corrections officer who claims to be permanently and totally disabled as a result of threats he received from inmates. In addition, claimant's counsel is challenging the ability of the state to deny benefits based on a medical evaluation it obtained after having paid benefits for over seven years. The Appeals Commission has 90 days to issue its decision from the date of oral argument.

William Bailey, an inmate at Wildwood Correctional Center (WCCC) in Kenai, sued the state and several Department of Corrections employees under the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA), as well as the United States and Alaska Constitutions. Mr. Bailey maintained he was disabled "from the street" and upon transfer to WCCC was not provided with an accommodation for his disability, and forced to work in conditions that were incompatible with his disability, resulting in a personal injury. The evidence from WCCC strongly suggested Mr. Bailey never worked during his short stay there and never reported any injuries while there. The state moved for summary judgment based on Mr. Bailey's failure to exhaust his administrative remedies before filing suit. Judge Ridner granted the motion and dismissed all of Mr. Bailey's claims against the state and the named employees. This case was handled by AAG Rebecca Cain.

Transportation

Boilers Simmer Down

The Department of Fish and Game purchased six boilers to heat water for rearing fish in the Fort Richardson Fish Hatchery. An Administrative Hearing Officer declared the boilers "lemons" and ordered their replacement, but deferred the question of additional damages to a superior court action. The supplier of the boilers and ADF&G appealed and cross-appealed to the superior court. ADF&G also intervened in a products liability action originally filed in the superior court by the supplier against the design engineer, the manufacturer, and the manufacturer's sales representative. The cases settled this month, avoiding a lengthy jury trial and separate administrative appeal. The design engineer, the manufacturer, and the manufacturer's sales representative will provide ADF&G with six new boilers and \$100,000 cash to cover increased maintenance costs and re-installation of the new boilers. The engineer waived current outstanding charges for services and will provide additional engineering services to help properly install the new boilers. AAG Larry McKinstry represented ADF&G in the administrative hearing while he was with the Transportation Section in Juneau. AAG Gary Gantz of the Anchorage office assumed responsibilities for the case after AAG McKinstry transferred to the Labor and State Affairs Section in Anchorage.

State Considers Assuming NEPA Reviews

In 2005, Congress authorized a pilot program under which five states could take over the environmental reviews of highway projects currently conducted by the Federal Highways Administration. This April, AAG Peter Putzier and Section Chief Jim Cantor met with lawyers and environmental analysts from the Federal Highways Administration, California, Texas, and Oklahoma to discuss assumption of the Federal Highways Administration's NEPA responsibilities and to learn how federal lawyers conduct legal sufficiency reviews of environmental documents.

Asphalt Hearing Begins

The Department of Transportation and Public Facilities alleges a contractor improperly constructed an asphalt road in Unalaska. The department brought an administrative claim for damages against the contractor. The lengthy hearing has begun, with AAG Jeff Stark representing the department.

CRIMINAL DIVISION

Anchorage DAO

On April 21 Victims for Justice held its annual Awards Banquet. Georgia Kustura, Marilyn Sansom and Colleen Outz, all paralegals in the Anchorage Office's Violent Crimes Unit, were nominated for awards in the category of Role Model. Georgia and Colleen were both recipients of awards. ADA Sharon Illsley was also a nominee for an award in the category of Substantial Professionalism in the Line of Duty.

The Anchorage office had several trials this month.

Carttikoff. ADA Helen Hickmon tried Corbin Carttikoff on robbery in the first degree, theft in the second degree and assault in the third degree. Carttikoff was only one of four co-defendants to opt for a trial. Carttikoff had been riding in a car with three of his buddies, "Stotts", "RJ", and "Lil Rob" all night long. At around 6:00 in the morning they happened upon the victim who was riding his bike to school early because he had missed the day before, and was trying to catch up on his school work. The driver asked the victim for a smoke and he responded that he didn't have any.

The driver cut him off as he was trying to go around the back of the car. Carttikoff got out of the front passenger seat of the car and racked his shotgun, and asked the victim where

he thought he was going. The driver slugged the victim and all three passengers started beating him up. They took his Yugio trading cards, his wallet and his brand new gloves. At trial Carttikoff claimed that he brandished and racked his shotgun because he was afraid of the victim. Once he realized the victim didn't have a gun and his friends started beating the victim, Carttikoff became afraid for the victim and tried to "help" him by punching him—after he put the gun back in his car.

The court granted defendant's request for a jury instruction on self defense and use of deadly force, even though it found that the victim did not use or display any unlawful force and the defendant admitted he and his codefendants instigated contact with the victim. The Anchorage jury didn't buy the "helping by punching" defense theory and convicted Carttikoff of all counts.

Ward. ADA Rob Henderson tried Damon Ward on five counts, including misconduct involving a controlled substance in the third degree, two counts of misconduct involving weapons in the second degree, and two counts of misconduct involving weapons in the third degree. Ward, a convicted felon, was by himself at the Gaslight Bar. A bouncer decided Ward's habit of frequently going to the bathroom with a different man each time was suspicious and called the police. APD arrived, contacted Ward, and found \$500 worth of crack cocaine in his jacket pocket. Officers also found two loaded handguns in his car, one under the passenger seat and one under the driver's seat. The gun under the driver's seat had Ward's DNA on it. Ward unsuccessfully attempted to run a "not my jacket or my car" defense and was convicted of all counts.

Thompson. ADA Michal Strynsak tried Edward Thompson for failure to stop at the direction of a peace officer in the 1st degree, resisting arrest, and assault in the fourth degree on a police officer. Thompson came to the attention of APD Officer Jurik by driving a tan Cadillac the wrong way on a downtown street. The passenger in the back of Thompson's car was waving his arms

in an attempt to get the officer's attention. Officer Jurik activated his lights and siren. Thompson pulled the Cadillac into the parking lot of the Holiday Inn. The passenger got out of the car and was ordered onto the ground.

Thompson also got out of the Cadillac, but then changed his mind and got back in, speeding off while the officer was attending to the passenger. The passenger told Officer Jurik that he saw Thompson arguing with a friend and approached. When he got in the car the friend got out and Thompson sped away. Jurik notified dispatch of the Cadillac and spike strips were laid out at several locations. The Cadillac was eventually stopped in Spenard. Officers ordered Thompson to raise his hands. He declined to comply and appeared to be reaching around in the dark car. An officer broke out one of the Cadillac's windows and sprayed OC into the car in an effort to disable Thompson. Several officers eventually dragged Thompson from the car and hobbled him, but not before he kicked Officer Fisher in the chest knocking the wind out of him.

During trial Thompson took the stand and claimed he had been a whistle-blower on the pipeline in 1992, which resulted in a contract being put out on his life. He wanted to pull over for the officers, but a sniper who eventually shot through the window of his car, was shooting at him. Apparently the jury disagreed with Thompson's version of events and convicted him of all three counts.

Martinez. ADA Brittany Dunlop tried Juan Martinez on three counts of assault in the fourth degree. Martinez, who had been imbibing at the Unisea Sports Bar, somehow found himself in an altercation with another patron. The bar manager attempted to intervene and Martinez began challenging him. A struggle ensued, which caused Martinez and the bar manager to fall to the floor, get up, and roll over a pool table. Another bartender, perceiving that the manager was in trouble, came to his assistance.

The two were able to get Martinez under control and throw him out of the bar.

Martinez was still outside the Unisea yelling and swearing at security when Unalaska Police Officer Linger arrived. Officer Linger, unaware that Martinez had been involved in the bar fight, asked him to leave the parking lot because he was yelling at the bouncer. Martinez assumed a fighting stance and began threatening the bouncer. Fearing the bouncer was about to be assaulted, Officer Linger intervened. Martinez then began yelling at Officer Linger while pushing and shoving him. The Unalaska jury decided that Martinez was having a bad night indeed and convicted him of all counts.

Lord. Still currently in a bench trial is Cynthia Lord, being prosecuted by ADA Sharon Marshall for three counts of murder in the first degree for the shooting deaths of her three sons, Christopher, age 19, Michael, age 18, and Joseph, age 16. Lord's defense team will attempt to prove that she was insane when she committed the murders because she was delusional, unable to tell the difference between reality and fantasy, and believed her sons were being turned into clones or robots.

In her videotaped confession, Lord told the detectives that she saw satanic messages in food labels and on television, and hears things other people can't. According to Lord, she lived alone with her sons and no one understood her or believed the messages she saw. Lord says that she killed her sons because of "my ideology and my views on this world, and what I see going on ... what I see is more evil." Lord told police that she loved her family and planned for months to shoot her boys. Lord said she bought the gun months before for \$250 through a friend of her sons.

On the day chosen for the murders, Lord set her alarm for 2:30 a.m. She had tried to drug her sons the night before by mixing her medication into a pitcher of Crystal Light to make them sleepy. She drank beer to give her courage for

the killings. She told detectives it took her an hour to bring herself to put the gun two feet from Michael's head as he lay on the couch. "I stood with my arm over him and killed him while he slept," she told detectives. Lord, who lived in a busy apartment complex, feared the gunshot might alert somebody. After killing Michael she ran to her room, ready to stash the gun, but no one came. Hours later, she woke her youngest son, Joseph, and sent him off to school. Michael still lay on the couch, his body covered with a blanket.

Christopher, Lord's oldest, woke up about 10 a.m. He helped her vacuum, she said. Lord didn't want to shoot him in the face while he slept, so she killed him when he sat down to play video games. She then dragged Christopher out of the room and covered blood stains in the hallway with clothes. She smoked a cigarette and at some point in the day she threw up. When Joseph returned home from Service High School around 2:30 p.m., she waited until he was preoccupied with the computer and shot him. She thought about killing herself as well, but two hours later she walked to a nearby Carrs and dialed 911. "I have a reason for doing what I did," Lord told detectives. In response to detectives asking Lord what should happen to her, Lord told detectives: "justice . . . punishment." The trial continues. It remains to be seen if Lord will get her wish.

West. Finally, continuing in trial are ADAs John Skidmore and Gustaf Olson, trying Dwayne West on six counts of robbery in the first degree, seven counts of assault in the third degree and one count of misconduct involving weapons in the second degree. In the early morning hours of Christmas Eve, about fifteen to twenty people were at a residence having a party. As the party continued, two young, black males walked in. About fifteen minutes after they arrived, one of the men pulled out a black handgun and ordered everyone to give them their money and other items. The second man then pulled a thick, square-looking semi-automatic handgun

out, put it to one of the party-goer's head and asked him if he thought he was playing around, while pushing him down on a couch and taking money out of his pocket.

Two other males who were at the party prior to the two black males arriving also assisted in the robbery. One of those individuals pulled out a razor type knife and held it to the face of one of the party-goer's and said something similar to "let's make an example out of this one, I'll carve my name in his cheek." The four individuals started pushing people to the ground, kicking them in the head and taking their money. Witnesses told police the foursome took everything that everybody had including a girl's key and her car. One victim told officers \$750 dollars cash had been taken from him in addition to credit cards. Other items taken included: a TV, some X-Box games, cell phones, some wrapped Christmas presents, and miscellaneous CDs. Once the foursome had everything, they left the residence telling the victims to stay put. About 30 to 45 seconds later, the victims heard four to five gunshots and glass breaking. A bullet was found lodged in a wall behind a mirror in the residence. Officers identified eight individuals who had a weapon pointed in their direction and items stolen from them.

Officers obtained detailed descriptions of the four robbers from the victims and a description of the getaway car. One of the robbers was described as identifying himself at the party as "Fitty" for the rapper Fifty-Cents, who he looked like. He was wearing a gold jumpsuit top and bottom. Officers located the getaway car parked outside a residence on Irwin. A contemporaneous K-9 track led officers to a nearby residence. Contact was made with the occupants of the residence, who matched the descriptions given of the robbers. A search warrant was obtained for the residence and some of the stolen items were recovered in the apartment. All four robbers were arrested and interviewed.

Edwin Busby admitted being involved in the robbery by taking a box containing video games

from one of the other participants and handing it to someone else. He also admitted to having a bag that contained people's items. According to Busby, Dewayne West was one of the individuals that pulled out a gun and waved it around. Busby stated that he left with the group and "Jace" and one other person left in Jace's vehicle. Busby stated that once they arrived at the Irwin residence, they dumped the items out and the group went into the kitchen to discuss how they would split the proceeds of the robbery. Busby also told officers that "Jace" had given him \$120 dollars after the robbery.

Officers attempted to interview Marcus Stone who identified himself as Tyrel Thompson and opted not to make a statement. Later, after being transported to the jail, Stone told officers his correct identity.

Jace Bohn also admitted to participating in the robbery. According to Bohn, West invited him to the party and arrived shortly after he did. West and Stone pulled out blue steel semi-auto pistols and began the robbery. Bohn went around and helped pick up the items that people were "offering" to give up. Bohn denied the allegations that he was holding a razor to anyone's face and threatening them. Bohn stated that West and Stone pointed the guns at everyone, moving around and "covering" lots of people.

West, identifying himself as "Fitty," was also contacted. Police searching the residence found the top to a gold jumpsuit hidden under the mattress West was laying on, and the bottom of the jumpsuit shoved into a closet in the same room. Tennis shoes found in the room match shoeprints observed by officers on the side of one of the getaway vehicles parked nearby. All of West's co-defendants are testifying against him. The defense appears to be that West was reckless but lacked the intent to rob anyone and the victims had the "wrong impression." We'll see if the jury agrees.

Fairbanks DAO

During the month of April, ADA Jason Gazewood convicted Bryon Geisinger of manslaughter and other charges arising out of a traffic accident that occurred on Chena Hot Springs Road in the Fairbanks area. Geisinger, who was intoxicated at the time, plowed into a vehicle that was parked along the highway. Geisinger caused injury to two of the occupants and killed a world renowned physicist, Yong Ki Kim, who was visiting Alaska with his wife and adult son.

ADA Elizabeth Crail could not convince the defense attorney that a criminal mischief case should not be dismissed, just because a broken automobile window had been repaired for less than the estimated cost of repair. Defense counsel overlooked the scratched paint and the cost to repair damaged paint. The jury did not overlook the scratched paint and convicted the defendant of criminal mischief in the third degree.

The grand jury has been busy once again this month. In one case, the grand jury returned an indictment against a 16-year-old from Anderson for a single vehicle roll over accident that claimed the life of a 17-year-old passenger sitting in the front passenger seat. The 16-year-old driver had been told by his older brother who was a passenger in the vehicle and the decedent, to slow down before rolling the vehicle on a roadway in Anderson that is posted at five miles per hour. In addition, the front passenger seat did not have a seatbelt - it had been removed and not replaced.

The felony unit received 82 cases through April 25. On the positive side only two felony DUI's have been received this month.

The misdemeanor unit was busy with numerous trials and the usual new cases. Through April 25, the unit received 74 new DUI's out of a total number of 243 referrals.

ADA Matt Christian spent a week in Galena where he did two trials. He was supposed to do an additional trial but he and the defense exhausted the jury pool.

Kenai DAO

Sentencings

This month the Kenai DAO closed files on several cases that had been long in coming. ADA Scot Leaders had earlier gotten convictions on all counts in an indictment charging the defendant with sexually molesting two children and possessing child pornography. He was sentenced to 37½ years with 18 years suspended. The case has been pending since 2002, and the defendant has been incarcerated since then awaiting his trial. It was the efforts of the defense attorney that dragged the case out for so long.

A 22-year-old son, who was convicted at trial of murder in the second degree for stabbing his mother in the back, was sentenced to 60 years in jail with 20 years suspended. The judge had excluded all of the 404(b) behavior except the last incident a week before the mother's death when the defendant said to his mother and his siblings, "You all have it coming, especially you", pointing at his mother. The murder occurred in January 2005.

Trials

The office had two felony DUI trials going at the same time: one in Kenai and one in Homer. ADA Kelly Lawson got a conviction on the one felony count of DUI in the Kenai case, and ADA Jean Seaton got convictions on the DUI and refusal, as well as driving while license revoked. The defendant in ADA Seaton's case had been previously convicted of felony DUI so there was much justice to be had in that case.

Grand Juries

A bookkeeper for a few local businesses was indicted on 111 counts including scheme to defraud, theft in the first degree, forgery, falsifying business records, fraudulent use of an access device, and tampering with evidence. For the past five years she has been "cooking the books" to cover her thefts, which include

blatantly writing checks to herself and depositing them in her own account. The total appears to be approaching \$200,000. She said she continued to do it because it was just so easy.

The grand jury also indicted a car thief, twice. During the first indictment, the defendant was charged with stealing three assorted vehicles: a truck, a motor-home, and a bulldozer. One of the victims was there with his grandson who was a friend of the defendant's as we learned while waiting for the grand jury to start. After the grand jury, the grandson told the investigator he had bought a car from the defendant and now wondered if it too might have been stolen. He gave the investigator the key, and as luck would have it, this vehicle was stolen too. In the back of the vehicle were possessions that had been in a fifth stolen vehicle at the time it was stolen. Between the time of the first and the second indictments, the fifth stolen vehicle mysteriously appeared abandoned in the middle of a back road, having been stripped of most of its usable parts.

Kodiak DAO

In October 2006 a 34-year-old Akhiok man barricaded himself in his home and shot out all the electric lights after his adult sister reported waking to find him naked in bed with her. After the Alaska State Troopers arrived the standoff ended with the man surrendering himself without further violence. The defendant was found to be greatly intoxicated. In April he plead to one count of B felony weapons misconduct and one count of attempted third degree sexual assault and was sentenced to a composite sentence of 48 months with 36 months suspended, and placed on probation for five years. He was also ordered to undergo a sexual deviancy examination and to complete any treatment as shall be recommended, and to register as a sexual offender. All weapons recovered during the investigation were forfeited to the state. This defendant was also ordered to

refrain from consuming any alcohol during his period of probation.

A 21-year-old Kodiak man was convicted of class C felony criminal mischief and misdemeanor assault after inappropriately expressing his anger over a losing round of Trivial Pursuit™ at a teen gathering. This defendant arrived late to the gathering, already intoxicated, and had been there less than five minutes before effectively morphing the game into rock'em-sock'em robots. This wayward lad was given 30 days to serve and a five year suspended imposition of sentence on the felony criminal mischief, consecutive to 360 days with 300 days suspended on the misdemeanor assault. A probation condition of both counts was that he consume no alcohol during his five year term of probation, nor to be found any place where alcohol is sold or consumed, and that he is to undergo a substance abuse evaluation and to complete any treatment as will be recommended, including up to 60 days of residential treatment. He was also ordered to complete a six month "life skills" program.

A Kodiak grandmother caught her boyfriend in bed with her 4-year-old granddaughter. When she pulled back the sheets and discovered her granddaughter's pants pulled down to her ankles, she grabbed her granddaughter and went immediately downstairs and called the police. However, when the dispatcher answered the 911 call this grandmother hung up the phone before saying anything. The police dispatcher traced back the 911 hang-up, called the house, and the police were immediately dispatched when no one answered. When later asked why she called 911 only to hang up, "because", she began, and then paused for a second, "I decided I was just going to go back upstairs and kill him". The police arrived shortly and the man was immediately taken into custody. The grand jury subsequently indicted this 44-year-old Kodiak man for two counts of first degree sexual abuse of a minor. A July trial date is pending.

Kotzebue/Nome DAO

In separate Kotzebue cases, Enoch Porter and Eli Mitchell entered pleas to assault one. Porter repeatedly stabbed his girlfriend with a knife, and will serve ten years in prison. Mitchell hit his ex with a hatchet, cutting her nose and breaking her arm, and will serve up to fifteen years in prison.

In Nome, Roy Henry drew the attention of police by driving his snow machine while intoxicated down Front Street. Henry ignored the lit-up police truck following him, and instead turned out onto the sea ice and then back onto the tundra outside of town, avoiding the efforts of several officers to stop him. The goose chase ended with Henry at gunpoint after he had attempted to ram a police truck with his snow machine. Henry was indicted on charges of felony DUI, felony refusal, failure to stop and assault third. Trial is set for this summer.

Palmer DAO

Paralegal Debbie Fischer spent a week in the Kodiak DAO training the new paralegal and received wonderful hospitality from the Kodiak crew.

Martha Harper was sentenced by Judge Beverly Cutler to serve nine years in prison, with additional suspended time and probation, on charges of assault in the first degree, assault in the third degree and DUI. On August 11, 2006, Harper drove drunk (weaving, tailgating, driving through ditches, passing vehicles, and causing numerous motorists to take evasive action). Police pursued Harper at speeds of 90 to 100 miles per hour after she almost hit an officer who tried to pull her over. During the pursuit on the Parks and Glenn Highways, Harper drove in and out of ditches, struck guardrails and struck a truck she was trying to pass. Harper continued southbound on the Glenn, where she crossed the grass median, entering the oncoming northbound lane, and struck head-on a Ford Expedition

driven by Jennifer Setters. Setters was injured and taken to Mat-Su Regional Hospital. Harper's blood alcohol level was .264 an hour and fifteen minutes after the collision. It is amazing no one was killed in the crash, more than likely a result of both women driving large vehicles. Harper did not have a prior criminal history. DA Roman Kalytiak prosecuted this case for the state.

Matthew Marr and Barret Ray were sentenced by Judge Kari Kristiansen to serve eight years in prison, with additional suspended time and probation, after pleading no contest to robbery in the first degree. During the early morning hours of February 23, 2006, Marr and Ray entered the home of Jeff and Mandy Munholland and robbed them of money. During the robbery, Ray threatened Jeff Munholland with a box cutter, and Marr poured gasoline in the Munholland's bedroom and threatened to ignite it with a lighter. Mandy's 4-year-old son and baby were also in the bedroom at the time. Marr and Ray's attorneys argued at sentencing that the event was a drug deal that went bad, which the victims denied. Marr and Ray did not have criminal records. DA Roman Kalytiak also handled this case.

ADA Suzanne Powell prosecuted the following cases:

A Palmer jury found Richard L. Evans guilty of misconduct involving a controlled substance in the fourth degree (for possession of methamphetamine) and driving while license revoked. Evans has two prior felony drug convictions, including attempted manufacture of methamphetamine, and multiple misdemeanor convictions.

Donald Roberts plead no contest to manslaughter for the reckless killing of his nephew, Earl Roberts, at Alexander Creek last year. On June 18, 2006, the 67-year-old defendant and his nephew were drinking together at Roberts' cabin. The following morning, Roberts called neighbors asking for their help to move his nephew out of the sun. The victim was suffering from a

gunshot wound when neighbors arrived and died before medics could get there. Donald Roberts told investigators that he had no recollection of the previous night. Ironically, Harold Roberts, Donald Roberts' brother, shot and killed his son-in-law, Kenneth Caulkins, at Alexander Creek in 1999. Harold Roberts was acquitted at trial after claiming self-defense. Donald Roberts' sentencing is scheduled for August 3, 2007, and he remains in custody.

Judge Kristiansen sentenced Terri L. Trudeau to 12 months, with 10 months suspended, and placed her on probation for 5 years with a conviction of record for felony theft in the second degree. The defendant pled to the theft charge for stealing funds from the Wasilla High School Football Boosters Club and the Wasilla High School Wrestling Boosters Club. Prior to sentencing, the defendant paid full restitution of over \$25,000.

The following cases were prosecuted by ADA Rachel Gernat:

Monico Comparan was sentenced to four years, with two years suspended, on one count of assault in the third degree for strangling his girlfriend. She had to stab him in the back with a broken mirror to defend herself. Comparan, who was on felony probation at the time, received an additional 18 months to serve in his old case and lost his suspended imposition of sentence.

Steven Knights pled to one count of attempted sexual abuse of a minor and one count of distribution of child pornography. He will receive a sentence of eight years on the sexual abuse and three years, concurrent, on the distribution of child pornography charge. The sentence was part of a joint agreement between the State of Alaska and the U.S. Attorney's Office. In federal court, Knights pled guilty to the single count of sexual exploitation of a child. The joint agreement calls for Knights to serve a total prison sentence of 19 years, followed by an 11-year period of federal supervised release. Knights sexually

abused his step-daughter since she was a young child. He was also found to be in possession of thousands of images of commercial child pornography and pornography of the victim. In connection with the federal guilty plea, Knights admitted that, when he went to Oklahoma for job-related training, he took sexually-explicit digital photographs of himself and the victim and transported those photographs from Oklahoma back to Anchorage. Knights' state sentencing is scheduled for July 24, 2007, and his federal sentencing is July 10, 2007. The investigation was a joint effort of the Immigration and Customs Enforcement agency and the Alaska State Troopers.

Martin Fleming pled to one consolidated count of attempted sexual abuse of a minor in the second degree and one consolidated count of harassment. Fleming, a school bus aide, sexually touched a number of young girls on the bus while they were riding to school. Fleming was high on a number of drugs at the time. Fleming's sentencing is set for July, and he remains in custody.

Konstantin Kraskov was sentenced to 24 months, with 16 months suspended, and five years of probation on one count of assault in the third degree for hitting his then 17-year-old wife in the face with a shovel. The victim married him when she was 16-years-old. On the night of the assault, Kraskov became angry when she was not at home and visiting with her relatives. One relative saw the fight start, but did nothing because "that is what married couples do." This same relative, however, came to the victim's aid when he saw the defendant wielding a shovel. At sentencing, the state presented evidence that Kraskov called his wife from jail (for over 800 minutes) in violation of the no-contact order. During those calls he told her there was "no shovel" and also told her his only problem was she does not always listen to him and do what he says. Judge Kristiansen, troubled by Kraskov's statements, immediately remanded him and ordered no contact with his

wife until he completes the batterer's intervention program.

[SAVE THE DATE](#)

June 19-21, 2007 NAAG Summer Meeting –
Atlanta, Georgia

July 22-25, 2007 CWAG Annual Meeting –
Anaheim, CA